

**DRAFT**

POLICY FOR IMPLEMENTING  
THE STATE REVOLVING FUND FOR  
CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

Prepared by:  
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD  
STATE OF CALIFORNIA

last amended on ~~January 22, 2003~~September 22, 2005

|

**DRAFT**

This page intentionally left blank.

|

**DRAFT**

## ACKNOWLEDGMENTS

The State Water Resources Control Board thanks the individuals within the State Water Resources Control Board and members of Tri-TAC who freely shared their time in developing and amending the Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities.

**DRAFT**

This page intentionally left blank.

|

**DRAFT**

POLICY FOR IMPLEMENTING THE STATE REVOLVING FUND  
FOR CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES

TABLE OF CONTENTS

<u>TOPIC</u>	<u>PAGE</u>
ACKNOWLEDGMENTS .....	i
TABLE OF CONTENTS .....	ii-iv
APPENDICES .....	v
EXECUTIVE SUMMARY.....	vi
I. INTRODUCTION.....	1
II. PURPOSE AND OBJECTIVE .....	1
III. DEFINITIONS .....	1
IV. PRIORITY SYSTEM .....	5
A. Development of Regional Board Recommendations.....	<u>56</u>
B. Development of Statewide Priority List.....	<u>56</u>
C. Priority Classes .....	6
D. Project Ranking.....	7
E. Restrictions and Adjustments .....	<u>78</u>
F. Management of the Statewide List.....	8
G. Funding of Projects .....	<u>89</u>
H. Project Removal and Changes .....	<u>89</u>
V. LOCAL MATCH.....	9
A. Resolution .....	9
B. State Match Account.....	<u>910</u>
C. Terms .....	<u>910</u>
D. Disbursements.....	<u>910</u>
VI. RETROACTIVE FUNDING .....	<u>1011</u>
VII. REFINANCING.....	<u>1011</u>
VIII. WATER RECYCLING PROJECTS .....	11
A. Funding Sources and Applicable Policies.....	11
B. Multi-Purpose Projects.....	11

IX.	FACILITIES PLANNING .....	12
A.	Project Report .....	12
B.	Environmental Impact Analysis .....	<del>15</del> 16
C.	Water Conservation .....	<del>16</del> 18
D.	<del>Revenue Program</del> <b>General Planning</b> .....	<b>18</b>
<del>D.E.</del>	Revenue Program.....	<del>17</del> 18
<del>E.F.</del>	Eligible Project.....	<del>19</del> 21
<del>F.G.</del>	Capacity Funding Limitations .....	<del>22</del> 23
<del>G.H.</del>	Population or Flow Projections .....	<del>22</del> 24
<del>H.I.</del>	Industrial and Federal Facilities .....	<del>23</del> 24
<del>I.J.</del>	Preliminary Loan Commitment .....	<del>23</del> 24
<del>J.K.</del>	Design-Build Projects .....	24
<del>K.L.</del>	Technical Review and Panel Selection Requirements for Design-Build Projects.....	<del>25</del> 26
X.	PLANS AND SPECIFICATIONS.....	<del>26</del> 27
A.	Review Procedures.....	<del>26</del> 27
B.	Value Engineering.....	<del>27</del> 28
C.	Project Performance Standards .....	<del>27</del> 29
D.	Loan Contract.....	<del>28</del> 29
E.	Labor Wage Provisions .....	<del>28</del> 30
F.	Minority Business Enterprise/Women’s Business Enterprise.....	<del>29</del> 30
XI.	COMPLIANCE WITH OTHER FEDERAL STATUTES .....	<del>29</del> 31
XII.	ALLOWANCES .....	<del>30</del> 31
A.	Normal Allowances .....	<del>30</del> 31
B.	Design-Build Allowances .....	<del>30</del> 31
XIII.	LOAN APPLICATION AND CONTRACT AWARD .....	<del>31</del> 32
XIV.	APPROVAL TO AWARD (ATA) .....	<del>31</del> 32
XV.	AMENDED LOAN CONTRACT .....	<del>32</del> 33
A.	Interest Rate .....	<del>32</del> 33
B.	Final Loan Amount .....	<del>32</del> 33
C.	Contract Initiation .....	<del>32</del> 33
D.	Cost Increases .....	<del>32</del> 33
E.	Future Local Debt .....	<del>32</del> 34

XVI.	LOAN DISBURSEMENTS.....	<u>3334</u>
A.	Loan Disbursement Requests.....	<u>3334</u>
B.	Allowance Requests.....	<u>3334</u>
C.	Construction Progress Payment Requests.....	<u>3335</u>
D.	Division Assistance.....	<u>3435</u>
XVII.	CONSTRUCTION.....	<u>3435</u>
A.	Preconstruction Conference .....	<u>3435</u>
B.	Construction Inspections.....	<u>3435</u>
C.	Completion of Construction Date .....	<u>3436</u>
D.	Status Reports .....	<u>3436</u>
XVIII.	OPERATION .....	<u>3536</u>
A.	Final Project Inspection .....	<u>3536</u>
B.	Project Performance Certification.....	<u>3536</u>
XIX.	RECORD KEEPING REQUIREMENTS .....	<u>3637</u>
XX.	REPAYMENTS.....	<u>3637</u>
XXI.	BOARD RESERVATION OF AUTHORITY.....	<u>3738</u>
XXII.	ELIGIBILITY DISPUTES .....	<u>3739</u>

**DRAFT**

## APPENDICES

- A. State Revolving Fund Loan Program Flow Chart
- B. State Revolving Fund Contacts
- C. Additional Program Guidance
- D. Water Recycling Funding Guidelines
- E. Environmental Review Process Guidelines
- F. Water Conservation Guidelines
- G. Revenue Program Guidelines
- H. -Deleted-
- I. Allowance Tables
- J. Project Performance Standards
- K. Approval To Award Form and Instructions, and MBE/WBE Compliance Guidelines
- L. Sample MBE/WBE Utilization Report Forms
- M. Sample Certification of Compliance with Federal Laws and Authorities
- N. Sample Loan Application and Loan Contract Checklist
- O. Certification of Bond and Insurance Coverage and Non Discrimination in Employment Notice
- P. Sample Disbursement Request Forms and Instructions
- Q. Sample Local Match Resolution
- R. Sewer System Evaluation Guidelines



**DRAFT**

## EXECUTIVE SUMMARY

This Policy was written to implement the 1987 Amendments to the Federal Clean Water Act, which created the State Revolving Fund (SRF) Loan Program. The SRF provides loan funding and other types of assistance for construction of publicly-owned wastewater treatment works and water reclamation facilities, development and implementation of programs to control pollution from nonpoint sources and stormwater drainage, and implementation of estuary cleanup programs. This Policy covers SRF assistance for the construction of wastewater treatment and water reclamation facilities.

This Policy is organized in sequential project development order. Sections I through VIII discuss general requirements, including the Local Match Program and the priority system, Section IX discusses facilities planning, and Section X design review and project performance standards. Sections XI through XVI discuss loan specifics, Sections XVII and XVIII discuss Construction and Operation respectively, and Sections XIX through XXII discuss record keeping, repayments and resolution of disputes.

## **INTRODUCTION**

The Federal Clean Water Act provides for the creation of a State Revolving Fund (SRF) Loan Program capitalized in part by Federal funds. The Federal Clean Water Act (CWA) authorizes loan funding for construction of wastewater treatment and for water recycling facilities, for implementation of nonpoint source and storm drainage pollution control management programs, and for the development and implementation of estuary conservation and management programs. The Policy for Implementing the State Revolving Fund for Construction of Wastewater Treatment Facilities (SRF Policy) only addresses the issuance of loans for wastewater treatment and water recycling facilities. The priority system, however, covers all eligible SRF activities. The SRF is intended to provide loans in perpetuity for construction of wastewater treatment and water recycling facilities, and for implementation of nonpoint source, storm drainage, and estuary conservation projects using State of California (State) and Federal funds.

This is the ~~sixth~~**seventh** amendment to the SRF Policy originally adopted by the State Water Resources Control Board (SWRCB) on August 18, 1988. The requirements contained in this amended SRF Policy apply to all projects receiving Facilities Plan Approval from the Division after ~~January 22, 2003~~**September 22, 2005**. A flow chart of the overall program procedures is provided in Appendix A. A list of contacts in the Division is provided in Appendix B. Appendix C contains additional Division guidance material on the SRF program.

## **II. PURPOSE AND OBJECTIVE**

The primary purpose of the SRF Loan Program is to implement the CWA and various State laws including the Clean Water Bond Law of 1984, the Safe, Clean, Reliable Water Supply Act (1996 Bond Law), the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (2000 Bond Law), and any subsequent bond laws, by assisting in the financing of wastewater treatment facilities necessary to prevent water pollution, recycle water, correct nonpoint source and storm drainage pollution problems, and provide for estuary enhancement, and thereby protect and promote the health, safety, and welfare of the inhabitants of the State.

## **III. DEFINITIONS**

The following words where used in this SRF Policy shall have the meaning hereafter ascribed to them:

- (a) “Allowance” means an amount of money based on a percentage of the accepted bid for an eligible project to help defray the planning, design, and construction engineering and administration costs of the project.
- (b) “Applicant” means a city, town, district, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under State law, or an Indian tribe or an authorized Indian tribal organization having jurisdiction over disposal of sewage, industrial wastes, or other waste, or a designated and

approved management agency under Section 208 of the Federal Clean Water Act applying for a SRF loan.

- (c) “Areawide Waste Treatment Management Plan” means a plan prepared in conformance with Section 208 of the Federal Clean Water Act.
- (d) “Completion of Construction” means the date that the work of building and erection of the project is substantially complete.
- (e) Design-Build
  - (1) “Best Value”, also known as “greatest value”, means any selection process in which proposals contain both process and qualitative components, and award is based upon a combination of price and qualitative considerations.
  - (2) “Design-Build” means the system of contracting under which one entity performs both architectural design/engineering and construction under a single contract with the owner. Also known as “design-construct” or “single responsibility” or “Turn Key.”
  - (3) “Design-builder” means the entity contractually responsible for delivering the project design and construction.
  - (4) “Design-Build Bid Proposal” means a document submitted by pre-qualified Design-builders in response to the Request for Design-Build Proposal and which contains cost, design factors and usually, function, layout, materials, aesthetics, construction techniques, and specifications.
  - (5) “Honorarium” means a stated amount sometimes paid to unsuccessful Design-builders in consideration for preparing a Design-Build bid proposal in response to the owner’s Request for Design-Build Proposal.
  - (6) “Request For Design-Build Qualifications” means the document issued by the owner prior to a Request for Design-Build Proposal to determine whether a firm is fundamentally qualified to compete for a certain project or class of projects.
  - (7) “Request For Design-Build Proposal” means the document issued by the owner to solicit design and construction services proposals from the pre-qualified Design-builders and that contains the project objectives, project design criteria, site information, contract requirements, selection procedure and proposal (submittal) requirements.
- (f) “Division” means the Division of Financial Assistance, the Division of Water Quality, SWRCB, or any other segment of the SWRCB authorized to administer the State Revolving Fund Loan Program.

- (g) “Effective Loan Date” means the date specified in the loan contract after which eligible construction costs under the loan contract can be incurred. This date will generally be the date of final plans and specifications approval.
- (h) “Eligible Project Cost” means that portion of the total cost of a project that is eligible for loan assistance from the State Revolving Fund pursuant to Federal and State laws, rules, regulations, policies and guidelines.
- (i) “Environmental Document” means either an Initial study and Negative Declaration or an Environmental Impact Report (EIR) prepared in accordance with the California Environmental Quality Act (CEQA).
- (j) “EPA” means the United States Environmental Protection Agency.
- (k) “Estuary Enhancement Project” means any programs, devices, methods, or systems used to attain or maintain water quality in an estuary nominated by the Administrator of EPA, which assures protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife, and allows recreational activities in and on the water.
- (l) “Excessive Infiltration/inflow” means a flow rate in excess of acceptable threshold values as defined by Section IX.A.4. of this document.
- (m) “Facilities Plan Approval” means approval by the Division of the project concept being proposed by the applicant.
- (n) “Federal Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C.A. 1251 et seq.) including any amendments thereto.
- (o) “House Lateral” means the sewer pipe from the public right-of-way to the residential structure.
- (p) “Housing Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.**
- (q) “Infill” means new development and redevelopment within the existing developed footprint of a community, either on vacant land or on previously developed, underutilized land.**
- ~~(pr)~~ “Infiltration” means the water entering a sewer system including that from service connections, from the ground, through such means as, but not limited to, defective pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished from, inflow.
- ~~(qs)~~ “Infiltration/Inflow” means the total quantity of water from both infiltration and inflow without distinguishing the source.

- (~~ft~~) “Infiltration/Inflow Analysis” means a study to demonstrate the nonexistence, or possible existence, of excessive Infiltration/Inflow in each sewer system tributary to the treatment works.
- (~~su~~) “Inflow” means the water discharged into a sewer system including that from service connections, such as, but not limited to, roof leaders, cellars, yards and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface run-off, street wash waters, or drainage. It does not include, and is distinguished from, infiltration.
- (~~tv~~) “Initiation of Construction” means the date that the notice to proceed with the work is issued for the project, or if the notice is not required, the date of commencement of building and erection of the project.
- (~~w~~) **“Land Use Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.**
- (~~hx~~) “Loan Contract Award” means the written agreement signed by all parties and any amendments thereto, between the SWRCB, and the applicant, and approved by the Department of General Services in which the terms, provisions, and conditions governing the State Revolving Fund loan are stated.
- (~~vy~~) “Nonpoint Source Project” means any programs, devices, methods, or systems used for preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture.
- (~~wz~~) “Preliminary Loan Commitment” means a formal action by the SWRCB or the Chief of the Division approving and reserving funds for the project.
- (~~xaa~~) “Project” means any distinguishable segment, or segments, of a wastewater treatment facility described in the approved facilities plan which can be bid separately, and for which loan assistance is being requested or provided.
- (~~yab~~) “Project Completion” means the date, as determined by the Division after consultation with the loan recipient, that operation of the treatment facility is initiated, or is capable of being initiated, whichever comes first.
- (~~zac~~) “Recipient” means an applicant who has an executed loan contract signed by all parties.
- (~~aaad~~) “Refinancing” means the use of State Revolving Fund Loan monies to refinance local external borrowings (borrowings from outside the local agency for eligible projects) at more attractive terms.
- (~~abae~~) “RWQCB” means the appropriate California Regional Water Quality Control Board.

- (~~a~~**ea**~~f~~) “Retroactive Projects” means those projects, which proceed to construction prior to award of the loan contract.
- (~~a~~**da**~~g~~) “Sewer System Evaluation Survey” means a systematic examination of the sewer system to determine the specific location, estimated flow rate, methods of rehabilitation, and cost of rehabilitation versus cost of transportation and treatment for each defined source of Infiltration/Inflow.
- (~~a~~**ea**~~h~~) “SWRCB” means the State Water Resources Control Board.
- (~~a~~**fa**~~i~~) “Storm Drainage Project” means any programs, devices, methods, or systems used for preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing of pollutants arising or flowing in storm drainage that is transported in pipes, culverts, tunnels, ditches, wells, channels, conduits, from urban or rural areas to surface or ground waters of the State.
- (**a**~~j~~) **“Sustainability” means balancing economic, environmental, and social factors to meet the needs of the present generation without compromising the ability of future generations to meet their own needs.**
- (~~a~~**ga**~~k~~) “Treatment Facilities” means any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement Section 201 of the Federal Clean Water Act, or necessary to recycle or reuse water at the most economical cost over the estimated life of the facilities, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; and elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities.
- In addition, “treatment facilities” means any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.
- (~~a~~**ha**~~l~~) “Water Quality Assessment” means a report prepared by the SWRCB to identify the water quality conditions in the waters of the State.
- (~~a~~**ia**~~m~~) “Water Quality Control Plan” means a SWRCB approved plan adopted pursuant to Division 7 of the Water Code designating or establishing beneficial uses and water quality objectives for water within a specified area and a program of implementation needed to achieve these objectives.

#### IV. **PRIORITY SYSTEM**

The primary purpose of this section is to implement a Priority System for providing SRF loan assistance for the planning, design, and construction of wastewater treatment, nonpoint source, storm drainage, water recycling, and estuary enhancement projects and programs eligible under Title VI of the CWA.

A. Development of RWQCB Project Priority List Recommendations

1. Annually, each RWQCB Executive Officer shall develop Project Priority List recommendations for the RWQCB.
2. The Executive Officer's Project Priority List recommendations shall be transmitted to the Division each year by the scheduled date set by the Division.

B. Development of Statewide Project Priority List

Annually, after review of the Executive Officer's Project Priority List recommendations, the SWRCB shall adopt a Statewide Project Priority List (Statewide List). The Statewide List shall identify those projects for which assistance from the SRF Loan Program is expected during the succeeding five-year planning period.

1. The Statewide List shall be adopted by the SWRCB not later than June 30 of each year.
2. The fundable portion (first year) of the Statewide List shall include those wastewater treatment, water recycling, nonpoint source, storm drainage, and estuary enhancement projects which have received a preliminary loan commitment and are scheduled for loan assistance during the first year of the five-year planning period. Projects receiving a preliminary loan commitment during the fiscal year shall be automatically moved to the fundable portion (first year) of the Statewide List provided the project is scheduled to receive a loan contract in the current fiscal year. The extended portion of the Statewide List shall include those projects without a preliminary loan commitment and those scheduled for a loan contract during the following four years. Placement on the extended portion of the Statewide List will be based on project schedules.
3. Placement of a project on the Statewide List shall not constitute a commitment to provide loan assistance.

C. Priority Classes

Each Project shall be assigned to one of the following priority classes:

1. Class A -- Public Health Problems.
  - a) Publicly Owned Wastewater Treatment Facilities projects required to alleviate public health problems where the County Board of Supervisors or the County Health Officer has certified that a health problem exists, and where a RWQCB has (1) adopted a prohibition for elimination of discharges from individual treatment systems and such prohibition has been approved by the SWRCB, or (2) approved a local

moratorium prohibiting the construction of new individual systems (See Appendix C), or (3) adopted a cease and desist order; and

b) nonpoint source, storm drainage pollution, and estuary enhancement projects required to comply with prohibitions, postings, limitations, or warnings that have been imposed by responsible health authorities, and where the RWQCB has concurred with the findings of the health authority and has established a time schedule for correction or elimination of the threat to public health.

2. Class B -- Pollution of Impaired Water Bodies.

Projects required to correct conditions where a certification is made by the RWQCB Executive Officer that the water quality objectives for an impaired water body are not being attained.

3. Class C -- Compliance With Requirements and Water Recycling Projects.

1) Projects necessary to comply with waste discharge requirements or other regulatory requirements formally imposed by the SWRCB or RWQCB, or projects necessary for correction of threatened violations of existing or proposed waste discharge requirements; and 2) projects which recycle water and are cost effective when compared to the development of new sources of water.

4. Class D -- Projects Serving as Preventative Measures Against Additional Water Quality Degradation for Impaired or Unimpaired Water Bodies.

Projects which would control discharges to impaired or unimpaired waters, where correction of such discharges may, or may not, be required through formally adopted waste discharge requirements. Includes projects to provide additional wastewater treatment capacity.

5. Class E -- Other Projects.

Projects not included in any of the other priority classes.

D. Project Ranking

Projects within each priority class shall be ranked on the basis of readiness to proceed. The project with the earliest estimated date for award of a loan contract will be ranked above a project with a later estimated date. In the case of a tie, the project discharging to the water body with the greater resource value will be ranked higher.



E. Restrictions and Adjustments

1. If a project falls in more than one priority class, the full project shall be placed in the highest priority class applicable to the more costly segment of the project, except as specifically ordered by the SWRCB.
2. If the priority classification of a project is in any way dependent upon State, County, or local action, or upon SWRCB or RWQCB action, only action taken prior to the adoption or amendment to the Statewide List will be considered.
3. The Statewide List may be adjusted or amended by the SWRCB for good cause subject to approval by EPA.
4. The SWRCB reserves the right to transfer treatment facilities from one priority class to another priority ranking, to reduce the eligible cost of any project, and to allocate available funds among one or more priority classes when the SWRCB determines such action to be necessary or appropriate for effective and equitable use of available monies. Such action will only be taken after a public hearing.
5. When appropriate, the SWRCB may create a set-aside for the purposes of assuring that SRF assistance will be available for nonpoint source, water recycling, estuary enhancement, and storm drainage projects and programs contained on the fundable portion of the Statewide List.

F. Management of the Statewide List

Before a facilities plan approval is given, a project implementation schedule shall be submitted by the applicant and approved in writing by the Division. The Division shall monitor and compare progress on the project to the established schedule to assure that the loan applicant is proceeding expeditiously with the project.

If at any time the Division determines that progress has slipped sufficiently to push the loan contract award beyond the end of the scheduled state fiscal year, the SWRCB may add a project, or projects, of approximately equal dollar value from the planning portion to the fundable portion of the Statewide List, provided the project, or projects have received preliminary loan commitments and are projected to be ready for loan contracts during the current State fiscal year. After such additions, all projects on the fundable portion of the Statewide List will continue to compete on an as ready basis for available funds.

G. Funding of Projects

Except as may be directed by the SWRCB, projects on the fundable portion of the Statewide List will receive loan contracts from the SWRCB on an as ready-basis.

H. Project Removal and Changes

Projects shall not be removed from the Statewide List unless:

1. The SWRCB so instructs;
2. The project has received a loan contract;
3. The RWQCB so requests and the SWRCB concurs; or
4. The loan applicant so requests and the SWRCB concurs.

V. LOCAL MATCH

The Clean Water Act requires the states to provide a match equal to 20 percent of the federal Capitalization Grant (state match) in order to receive federal monies. Subsection 13478 of Chapter 6.5 of Division 7 of the Water Code allows the SWRCB to enter into agreements with, and accept state match funds from local agencies in return for no-interest SRF loans. Existing SRF Loans are not eligible for no-interest loans.

The following requirements, in addition to all other requirements in this SRF Policy, apply to new SRF loans where the applicants are providing the state match:

A. Resolution

1. An applicant electing to participate in the program must submit to the Division an acceptable resolution passed by the local governing body. A model resolution is included in Appendix Q.
2. The resolution must state the applicant's intent to provide the necessary state match in the amount and at the times necessary to complete the project.
3. The resolution must include a commitment to provide the necessary state match for administrative services of 0.575 percent of the total eligible project costs to cover the cost of obtaining the administrative match. The fee will be waived if sufficient funds are available to make the administrative match from other sources.

B. State Match Account

The recipient must establish a local state match account prior to issuance of the loan contract for the specific project for which the state match is being paid. The recipient must deposit sufficient funds in the account as necessary to make payments to the contractor.

C. Terms

The interest rate on state match loans shall be zero (0) percent. The repayment period is 20 years. The principal amount of the loan to be repaid is not reduced by payment of the state match.

D. Disbursements

1. Allowances For Architect/Engineer (A/E) and Administration Costs

Recipients will also be required to submit a certification with the planning and design allowance payment requests stating that at least the state match portion of the incurred allowance costs have been paid. The Division will then authorize the disbursement of the federal share of the allowance requests.

2. Construction Costs and Construction Allowance

Recipients will be required to pay the state match share of the eligible loan amount of the contractor's invoice prior to submitting the progress payment request to the Division. As an alternative, recipients may pay the contractor(s) the full eligible amount of the contractor's invoice until they have paid an amount equal to the state match portion of the loan amount. In either case, recipients are required to submit certification of such payments to the Division with each disbursement request.

3. Assurances

Certification of such payments must be submitted to the Payments Unit with each pay request. The Division will then authorize the disbursement of the federal share of the eligible payment amount.

In addition to the certification of payment, recipients shall submit copies of the canceled checks on a quarterly basis documenting payment of the state match amount.

**VI. RETROACTIVE FUNDING**

Retroactive funding will be provided for only those projects where the applicant has submitted all required program documents and such documents have been approved before initiation of construction, but due to a lack of funds or other reasons, the applicant initiated construction after the approval of either plans and specifications or Request for Design-Build Proposals, but prior to issuance of the loan contract. Projects where construction is initiated before Division approval are not eligible for retroactive funding.

**VII. REFINANCING**

The use of SRF monies to refinance local external borrowings is eligible provided the project is approvable under Section VI. above. Refinancing of local debt will be contingent on the local borrowing document providing for recall of an amount at least equal to the amount of the SRF loan within two years of the SRF loan issuance.

**VIII. WATER RECYCLING PROJECTS****A. Funding Sources and Applicable Policies**

Water recycling projects generally serve one of two purposes: (1) meeting pollution control needs as specified in waste discharge requirements or (2) meeting water supply needs. Projects for which water recycling is the cost-effective alternative to meet pollution control needs are funded by the SRF in accordance with the same SRF criteria applicable to other wastewater treatment and disposal projects. Projects for which water supply is the purpose may be funded by either the SRF or the SWRCB's Water Recycling Loan Program (WRLP). A water supply-type recycling project will be funded under the WRLP unless (1) the WRLP funding cap is exceeded, (2) there are insufficient funds in the WRLP, (3) the applicant requests a zero-percent interest loan, or (4) the applicant proposes a Design-Build contract.

Water supply-type water recycling projects are placed in Priority Class C as water recycling projects that are cost effective when compared to the development of new sources of water. These projects must meet requirements contained in the amended WRLP Guidelines adopted by the SWRCB on April 17, 1997, or as later amended, as well as the requirements contained in this SRF Policy. The WRLP Guidelines are included in Appendix D.

The WRLP Guidelines may be more restrictive regarding eligible capacities than the SRF Policy.

**B. Multiple-Purpose Projects**

A water-recycling project may be a multiple-purpose project, serving both water pollution control needs and water supply needs. Multiple-purpose

projects can be funded under the SRF, or jointly funded under the SRF and the WRLP. However, the facilities associated with each purpose must be evaluated and the eligibility of facilities determined in accordance with the applicable provisions of either the SRF Policy or the WRLP Guidelines.

There are two types of multiple-purpose water recycling projects:

1. Water recycling facilities for water supply purposes may be proposed to be constructed simultaneously with wastewater treatment and disposal facilities that could meet discharge requirements without the water recycling facilities. The WRLP Guidelines would be applied to the water recycling facilities component of the project.
2. In other cases, water recycling may be an inseparable part of the facilities needed to meet discharge requirements but may be justifiable only by considering both the pollution control and the water supply benefits. In this case, appropriate provisions of the SRF Policy and the WRLP Guidelines will be applied.

## IX. FACILITIES PLANNING

Applicants will be required to complete a facilities planning process. A complete facilities plan will include a Project Report, a complete Environmental Document, and a draft Revenue Program.

To facilitate expeditious issuance of a preliminary loan commitment, the Division will offer consultation regarding specific program requirements during facilities planning. When an applicant is placed on the fundable portion of the Statewide List, the Division will offer assistance at the option of the prospective applicant. The assistance available will include guidance for (1) identifying project alternatives, (2) selecting the cost-effective alternative, (3) preparing the Project Report, the Revenue Program, and the Environmental Document. The Division will also offer assistance to aid applicants in assuring that they have the ability to administer and manage the construction of the proposed project.

### A. Project Report

A Project Report shall be prepared and submitted as part of the loan application process. While early submittal is not a program requirement, the Division **strongly** recommends that applicants submit the Project Report for review well in advance of commencing design.

The Project Report must contain, as appropriate, the following:

1. A statement of project needs and benefits, including a discussion of the water quality benefits of the project and the public health or water quality problems to be corrected.

2. A cost effectiveness evaluation of alternatives over a twenty (20) year planning period. The evaluations presented must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality.
3. An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process. For wastewater treatment projects producing sludge material, the following information needs to be identified and compared:
  - a. All landfills within a 100 mile radius that accept sewage sludge;
  - b. Any composting facilities within a 100-mile radius accepting sewage sludge;
  - c. The potential for dedicated land disposal;
  - d. Conversion of sludge to biosolids for distribution as soil amendment or as another agricultural product; and
  - e. Ultimate disposal methods approved by the RWQCBs.
4. An evaluation of the non-existence or possible existence of excessive infiltration/inflow (I/I) in the existing sewer system. If the average daily flow during periods of sustained high groundwater is less than 120 gallons per capita per day (gpcd), a Sewer System Evaluation Survey (SSES) is not required. If it is above 120 gpcd, the applicant must perform a SSES to determine whether it is cost-effective to treat or correct the I/I. If a SSES is not submitted, funding will be limited to 120 gpcd. If the peak flow during a storm event (highest three-hour average) exceeds 275 gpcd, a SSES must be completed or funding will be limited to the peak flow amount of 275 gpcd. Cost-effective corrections under these criteria are eligible for funding. See Appendix R for further guidance on SSESs.
5. Information on total capital costs, annual operation and maintenance costs, as well as the estimated annual or monthly costs to residential and industrial users for all of the alternatives.
6. A discussion of the existing population, flows, and loadings, and projections of the same, used to estimate the twenty (20) year capacity needs for treatment facilities and collection systems and forty (40) year capacity needs for interceptors and outfalls.

7. A discussion of the anticipated eligible capacity for the project and how that capacity was derived. (see Section IX.F. of the SRF Policy).
8. A description of the Best Practicable Wastewater Treatment Technology. (For more information see 40 CFR 35.2005(b) (7)).
9. A summary of public participation.
10. The following must be submitted for the selected alternative:
  - a. A detailed description of the selected alternative and the complete waste treatment system of which it is a part.
  - b. A summary of relevant design criteria (i.e., design flow, peak flows, daily BOD loadings, daily suspended solids loadings, overflow rates, detention times, sludge production, etc.).
  - c. The estimated construction and annual operation and maintenance costs and a description of the anticipated manner in which all the costs will be financed.
  - d. A summary of the cost impacts on wastewater system users.
  - e. A summary of the significant environmental impacts of the selected project and any proposed mitigation measures.
  - f. A copy of any proposed intermunicipal service agreements necessary for the project.
  - g. A statement that identifies and discusses the source(s) and the amount of unallocated potable water currently available in the project service area. If the amount of potable water is less than what is needed to serve the projected population for the proposed project, a plan identifying how that deficiency will be mitigated shall be presented.
  - h. A discussion of facilities which were previously funded by federal/state grants or loans, if such facilities are to be repaired or replaced.

- i. Applicants must comply with the Civil Rights Act of 1964. Where minority populations are included in the facilities planning area, the Project Report must show that such areas will be served or excluded from service only for reasons of cost-effectiveness (currently see 40 CFR Part 7).
- j. A description of operation and maintenance requirements.
- k. A demonstration that the selected alternative is consistent with any applicable approved water quality management plan.
- l. A summary of public participation.
- m. A copy of the current adopted waste discharge requirements issued by the RWQCB for the wastewater facility or improvements/expansion to be constructed. If no current adopted permit exists, a copy of the tentative waste discharge requirements must be submitted. The waste discharge requirements, however, must be adopted by the RWQCB before the approval of either the plans and specifications or the Request for Design-Build Proposal (for Design-Build projects).

**11. A description of how the applicant's project addresses each of the following state planning priorities in Section 65041.1 of the Government Code. The state planning priorities are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities. Applicants should use the most recent state planning priorities either in the above-cited Section, or its successors if modified at any time in the future. The state planning priorities as of the date of adoption of this policy, are as follows:**

- a. To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.**



- b. To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.
- c. To encourage efficient development patterns by ensuring that any infrastructure associated with development that is not infill supports new development that uses land efficiently, is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b), in an area appropriately planned for growth, is served by adequate transportation and other essential utilities and services, and minimizes ongoing costs to taxpayers.

**B. Environmental Impact Analysis**

Final Environmental Documents must meet general requirements of the CEQA. Applicants must also meet specific CEQA requirements that apply where a state agency is the “responsible party” as defined in CEQA. In addition to CEQA requirements, project applicants must follow specific documentation and review requirements that will assure compliance with federal environmental laws. Detailed environmental review process guidelines including a flowchart are contained in Appendix E.

The applicant must submit the draft Environmental Documents to the Governor’s Office of Planning and Research, State Clearinghouse for comments. The draft Environmental Documents must also be distributed for review and comment to other responsible (as defined in CEQA) local, and State agencies within the project’s service area. The Division, as a responsible agency, will review and comment on the draft Environmental Documents received from the State Clearinghouse.

Eight (8) copies of the draft Environmental Document must be submitted to the Division for distribution to designated agencies responsible for implementing federal environmental laws. The applicant must respond directly to all comments received from Federal agencies.

Under some circumstances, a SRF loan project may be approved under a statutory or categorical exemption from CEQA. In these cases, a Notice of Exemption (Notice) should be filed with the County Clerk. A copy of the Notice and supporting evaluation must be sent to the Division. Compliance with applicable Federal environmental regulations is required for exempt projects and may involve consultation with Federal agencies.

SRF projects must comply with federal laws pertaining to cultural resources, particularly Section 106 of the National Historic Preservation Act. SRF applicants must document the presence or absence of cultural resources in the project area, their significance, and any project effects. This documentation must be prepared by a researcher meeting federal professional standards for the type of resource in question. Section 13b of Appendix E provides details about the required information. When adequate information has been submitted to the Division by the applicant, the Division's Cultural Resources Officer will review it for Section 106 compliance and will forward approved documents to the State Historic Preservation Officer (SHPO). The SHPO has a 30-day review period in which to comment or to concur that the process is complete. The SHPO concurrence must be obtained prior to both execution of the loan contract and initiation of construction.

As a minimum, the appropriate Environmental Documents shall discuss the items outlined in Appendix E. The Environmental Documents shall discuss consistency with areawide planning such as wastewater treatment and water quality control, basin plans, and Section 208 plans.

In addition to submitting the final Environmental Document, the applicant must also submit to the Division copies of the resolution or similar documents certifying or adopting the document and making appropriate findings, an adopted mitigation monitoring plan, and the Notice of Determination filed with the Governor's Office of Planning and Research. If a preliminary loan commitment is approved, the Division will prepare a Notice of Determination and file it with the Governor's Office of Planning and Research.

Applicants must also adopt a mitigation monitoring plan for agreed upon mitigation measures. Compliance with this plan will be a condition of the loan contract.

Use of previously prepared Environmental Documents is acceptable provided the procedures and guidance in Sections 15153, 15162-15164, 15168, or 15221 of the State CEQA Guidelines are followed.

C. Water Conservation

The SWRCB will not execute a loan contract for a project until the applicant has adopted a water conservation program consistent with local ordinances and authorities. In lieu of adoption of an independent water conservation program, the applicant may become a signatory to the “Memorandum of Understanding Regarding Urban Water Conservation in California” September 1991, California Urban Water Conservation Council, which may be modified to suit local conditions.

If the applicant is not a water purveyor, it must (1) certify that seventy-five (75) percent of the water connections in its service area are covered by adopted water conservation programs approved by the Division or (2) demonstrate that the water purveyor(s) have signed the Memorandum of Understanding covering at least seventy-five (75) percent of the water connections within the applicant’s sewer service area.

If neither of these requirements can be met before the issuance of the preliminary loan commitment, the applicant must submit a specific time schedule for local adoption of a water conservation program. See Appendix F for further information.

The Division may waive the requirements of this section under the following circumstances: the water supplier for the community serves 3,000 or fewer customers and the costs to prepare a document to satisfy the SRF Policy requirements are found to be burdensome to the supplier in light of the benefits derived from the plan.

D. General Planning

**The SWRCB will not give facilities plan approval for a project until the authorized representative has certified that the applicant has adopted the “land use” and “housing” elements of its General Plan and that the project is consistent with the adopted land use and housing elements.**

**If the applicant is not responsible for adopting the General Plan, then the authorized representative would have to certify that at least seventy-five (75) percent of its service area is covered by adopted land use and housing elements and that its project is consistent with those adopted land use and housing elements.**

~~D~~E. Revenue Program

Section 204 (b) (1) of the CWA requires recipients to develop user charge systems and to have the legal, institutional, managerial, and financial capability to construct, operate, and maintain the treatment

works. The recipient will be required to prepare a Revenue Program in accordance with the Revenue Program Guidelines (see Appendix G), adopt a sewer use ordinance, and establish an acceptable dedicated source, or sources, of revenue to repay the SRF loan.

1. Wastewater Capital Reserve Fund (WCRF)

- a. All recipients of SRF loans shall create a dedicated WCRF for expansion, major repair, or replacement of their wastewater treatment facilities.
- b. The SRF loan contract will not be issued until an ordinance creating the WCRF is enacted by the local governing body.
- c. The recipient shall deposit sufficient funds to build up the WCRF at a minimum rate of one-half of one (0.5) percent of the SRF loan amount each year for a period of ten (10) years.
- d. All interest earned on deposits to the WCRF shall remain in the WCRF for the uses specified below. The recipient shall replace any amounts expended from the WCRF by depositing at a minimum annual rate of ten (10) percent of the expended amount.
- e. The recipient's unused bonding capability for the wastewater enterprise may be used to offset, dollar for dollar, the required cash deposits to the WCRF.
- f. Unused bonding capability means, with respect to each SRF loan contract issued after January 21, 1993, an amount equal to unissued bonds or other indebtedness authorized either by vote of the local electorate or by provisions of local or other law under which the borrower would be legally permitted to issue such bonds or other indebtedness without approval by the local electorate or by any other public entity.

The amounts required to be deposited in the WCRF may be reduced by any amounts held and not previously allocated for the purposes of this calculation. The amounts may be held in any fund or account established pursuant to a resolution or indenture of a borrower pursuant to which any bonds or other indebtedness have been issued and are outstanding, which amounts may be used for the purposes for which the WCRF is established.

- g. Money deposited in the WCRF shall be available for the costs for planning, design, and construction of capital improvements (See IX.D.1.a. above) to the wastewater treatment facilities.
- h. The recipient shall prepare and submit a report on WCRF activities and fund status beginning five (5) years after the Division's approval of the final Revenue Program. A report shall be due every five (5) years for the life of the loan contract.
- i. The requirement to create and maintain a WCRF shall remain in force for the life of the loan contract. At the end of the loan contract, disposition of the WCRF will be a local responsibility.
- j. Failure to meet the provisions of this Section could result in the immediate recall and repayment of all SRF loan funds disbursed to the recipient.

## 2. Draft Revenue Program

The applicant will be required to identify and make projections of the amount of revenue available from specific sources necessary to repay the SRF loan.

A draft Revenue Program must be prepared and submitted prior to Facilities Plan Approval. A loan contract will not be executed until the Division has approved the draft Revenue Program. The draft Revenue Program must include a draft ordinance or resolution committing a source or sources of funds for repayment. The draft Revenue Program shall be updated as appropriate and submitted with the final plans and specifications.

As indicated at the time of the preliminary loan commitment, the applicant will be required to identify a "dedicated" source of revenue to repay the loan. Revenue will be considered dedicated when the applicant passes an ordinance or a resolution committing a source, or sources, of funds for repayment. The resolution, or ordinance, dedicating a source of funding for repayment of the SRF loan must be adopted by the applicant and approved by the Division before the loan contract is issued.

## 3. Final Revenue Program

A final Revenue Program, a draft rate ordinance, and an adopted sewer use ordinance must be approved by the Division prior to ninety (90) percent disbursement of the SRF loan funds. The final approved Revenue Program should be reviewed periodically during the useful life of the project and modified as necessary.

EF.    Eligible Project

Project components, other than reserve capacity, are intended to be completely eligible or ineligible. The following are categories of eligible and ineligible costs:

1.    Eligible

- a.    Treatment facilities, including new collection systems in existing developed areas within the service area, and alternative treatment facilities such as leachfields, mound systems, wetlands, etc.;
- b.    Reserve capacity for treatment plants and pipelines; (See Section IX.F. for details).
- c.    Reasonable administration and laboratory building space directly related to the operation of the eligible facilities.
- d.    Process control systems;
- e.    Mitigation measures (except for land) mandated by State and/or Federal agencies;
- f.    On-site solids handling systems necessary to meet waste discharge permit requirements. Includes systems that perform thickening, stabilization, and dewatering of sludge as a means of preparing it for beneficial reuse and/or ultimate disposal.
- g.    Stationary and mobile equipment which are an integral part of the wastewater or sludge handling process such as front loaders for sludge drying beds, injection equipment for dedicated land disposal sites, and compost windrow turners. Equipment must be confined to the treatment plant or disposal site owned by the recipient.
- h.    Allowances for planning, design, construction and prime engineering, and administration;

- i. Special equipment necessary to maintain the eligible treatment facilities, including the manufacturer's list of spare parts;
- j. Necessary insurance related to the construction contract; and
- k. Cost-effective buy-in for all of the proportional costs to connect to an existing treatment plant and/or collection system.

2. Ineligible

- a. All land, easements, and rights of way;
- b. Contingencies and honorariums;
- c. Construction change orders and claims;
- d. House laterals for collection systems and any in-house facilities;
- e. Engineering costs included as part of the construction bid for other than Design-Build projects;
- f. Decorative items (art work, sculptures, reflective ponds, fountains, etc.);
- g. Solids handling facilities that perform pasteurization, co-generation, conditioning, heat drying, thermal reduction, and facilities for packaging or distributing biosolids.
- h. Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;
- i. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the treatment plant;
- j. All other items not included in the construction contract except allowances; and
- k. Replacement of previously grant funded facilities are ineligible except for the following specific cases:
  - (1) Where an amendment to a basin plan adopted by a RWQCB requires upgrading of specific

treatment systems or technology to achieve a mandated enhanced level of treatment, and the replacement of previously grant funded facilities is necessary to achieve the mandated enhanced level of treatment required by the amendment.

- (2) Where a proposed water recycling project which meets the definition contained in Section I.D. (eligible water recycling project) of the (WRF) Guidelines (See Appendix D) adopted by the SWRCB on April 17, 1997; and which is proposed to use recycled water to replace a bonafide current or proposed beneficial consumptive use of potable water; and where replacement of previously grant funded facilities is necessary to install the recycling project.
- (3) Notwithstanding any other provisions of this policy, the SWRCB may consider granting an exception to this policy in the event that the SWRCB, after a meeting, makes a finding that the petitioner suffers from severe hardship or unique circumstances.

The above eligible and ineligible items must be segregated in the engineer's estimate.

FG. Capacity Funding Limitations

The eligible capacity shall be determined using average dry weather flow (ADWF) and appropriate peak flows in accordance with population and per capita flow estimates provided by the applicant. Project capacity must be consistent with environmental constraints.

Eligible capacity for treatment plants and collection systems will be up to a period of twenty (20) years from the estimated date of initiation of construction. For projects with a design capacity greater than 20 years, eligible and ineligible costs shall be determined on an incremental basis. Eligible capacity for multiple phased projects shall be determined on a case by case basis.

Eligible capacity for interceptors and outfalls will be up to forty (40) years from the estimated date of initiation of construction. Allocation between eligible and ineligible costs shall be determined on an incremental basis. Eligible Capacity for multiple phased projects shall be determined on a case by case basis.



Eligible capacity shall be calculated by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the per capita flow shall be based on the existing population and the measured flow. The flow thus calculated will be deemed to include all the eligible project flows, (residential, commercial, existing Federal facilities, existing industrial, and infiltration/inflow). Eligible capacity will be determined at the facilities planning stage.

The applicant will be responsible for documenting, in the facilities plan, the peaking factors used for the project.

## GH. Population or Flow Projections

Population projections must be from an independent agency [i.e. Regional Council of Governments, appropriate local planning agencies, Department of Finance, or Areawide Water Quality (208) Management Plans]. Population or flow projections will be used to determine the eligible project capacity. Depending on the apparent reasonableness of the local projection, the Division may require additional documentation to support the reasonableness of the projection. A detailed discussion of the local projections should be included in the Project Report.

## IH. Industrial and Federal Facilities

Eligible capacity will include flows from existing Federal and industrial facilities discharging to the municipal system.

## JH. Preliminary Loan Commitment

The Division may request a Preliminary Loan Commitment after the Division has issued facilities plan approval and the applicant has concurred with the eligible project. The loan application must be submitted before the project is considered for the preliminary loan commitment. The preliminary loan commitment will expire at the end of the time period specified in the approval document unless the specified deadline is met. The specified deadline will be the date the applicant submits biddable plans and specifications to the Division, or another appropriate deadline. The Division may approve up to a ninety (90) day extension for a good cause.

## KJ. Design-Build Projects

Applicants requesting SRF loan assistance for Design-Build projects will be required to complete both a facilities planning process and a Design-Build selection process. The planning process will follow the planning documentation requirements described under Section IX.

above, and the Design-Build process will follow a two-phase selection process. The two-phase selection process is a procurement process which includes the preparation of a Request for Design-Build Qualifications (RFQ) to pre-qualify the bidders and a Request for Design-Build Proposals (RFP) from the pre-qualified bidders. For additional information on implementation of the Design-Build process, it is recommended that the applicant refer to the RFQ/RFP Guide Section of the 'Design Build Manual of Practice' published by the Design Build Institute of America (DBIA) (Phone No. (202) 682-0110).

Before a RFP is issued, the applicant must complete a RFQ process. The applicant shall prepare RFQ documents for the selection of the most qualified Design-builders who have the greatest potential to design and build the proposed project and submit the documents to the Division for review and approval. In this document, the applicant must establish clear and objective standards or criteria which will be used to determine the most qualified firms to be invited to prepare and submit a Design-Build bid proposal. Responses from Design-builders must be evaluated and Design-builders must be pre-qualified by the applicant before issuing a RFP.

Before the RFP is finalized, the applicant shall select a Design-Build Technical Review Panel (Panel) to review the RFP. See further discussion in Section K for the Panel selection requirements. The RFP must provide enough information to clearly explain the project objectives and the design intent. At a minimum, project objectives, process treatment requirements (design criteria), unit processes, external constraints that apply to the project, site definition, geotechnical investigations, process definition, performance requirements, permit requirements, and similar information needs to be provided. The minimum effort is similar to completion of a preliminary design that represents approximately 15 to 20 percent of the conventional design effort.

The Panel shall review the RFP to insure the Design-Build objectives and conditions, as discussed below, are described properly and accurately. Based on the results of the Panel's review, the RFP will be finalized. Only those Design-builders who are pre-qualified by the applicant will receive the RFP and only they may submit a Design-Build bid proposal. The RFP must provide a scope of work that is sufficiently detailed to allow pre-qualified bidders to produce cost-effective bid proposals. Also, criteria for selection of the successful bidder should be communicated clearly and structured such that the qualification-based bidding process is reinforced.

The final RFP shall be prepared and submitted to the Division along with a copy of the adopted Waste Discharge Requirements (WDR)

issued by the RWQCB. While early submittal is not a program requirement, the Division strongly recommends that applicants submit a draft RFP for review well in advance of soliciting bids. The final RFP shall be submitted to the Division for review and approval before advertising for bid proposals.

The applicant will evaluate the bid proposals and make the final selection of the bid proposal which provides the best value. Best value is determined by both qualitative factors (e.g., design solution, management and schedule) and proposed bid price in the evaluation and selection process. The Panel that was used to review the RFP will also review the applicant's evaluation of the bid proposals and make a recommendation to the applicant. If the applicant does not concur with the Panel's recommendation, the applicant must provide the Division with the justification for not considering the Panel's recommendation. The Division reserves the right to reject the applicant's selection if not fully justified. The final loan contract and the Approval to Award (ATA) the Design-Build contract will be issued by the Division after the successful bidder is selected by the applicant and ATA must be obtained from the Division before initiating construction.

## L.K. Technical Review and Panel Selection Requirements For Design-Build Projects

The preparation of a RFP for all Design-Build projects must be undertaken by SRF loan applicants with the assistance of individuals knowledgeable of public contracting requirements, and with the help of professionals experienced in the application of the performance criteria appropriate to facility needs.

All SRF loan applicants for Design-Build projects shall meet the following technical review and Panel selection requirements prior to the completion of preliminary (up to 20 percent) design.

1. The proposed technical review effort should be completed in accordance with the RFQ/RFP Guide Section of the Design Build Manual of Practice published by the DBIA or equal.
2. The technical review must insure that the RFP outlines: 1) the Design-builder selection criteria clearly; 2) details the project description, project objectives, design intent, design criteria, unit processes, responsibility/risk allocation, and submittal requirements; 3) includes the responsibilities of the owner, Design-builder, Design-builder's architect (including the engineer and other professionals); 4) specifies responsibility for performance, scheduling, permits, fees and insurance; 5) specifies liquidated damages (if any); 6) and addresses other construction related issues properly and accurately. In

addition, the applicant's needs must be described precisely and in a manner that will be universally interpreted and understood.

3. The applicant's consultant, or any company affiliated with the consultant, responsible for performing any portion of the project design, assisting in preparation of the RFP, or performing the technical review of the RFP, is not permitted to participate on a team to bid on the Design-Build proposal.

4. The applicant's consultant, or any company affiliated with the consultant, but responsible for performing only the project planning, is permitted to bid on the Design-Build proposal.

5. The applicant, and or consultant, or any company affiliated with the consultant, responsible for performing the project planning, preparing preliminary design, or assisting in the preparation of the RFP, is not permitted to be the leader of the Panel or comprise more than twenty (20) percent of the Panel membership.

6. The Panel leader will be selected by the applicant using a qualifications-based selection process (Cal. Govt. Code Section 4525-4529).

It is highly recommended that loan applicants submit a Request for Proposal for Technical Review Services (Proposal) to the Division for review prior to soliciting Panel members. This will eliminate the necessity to re-advertise if the Proposal or the Panel is found not acceptable by the Division. Once the Panel is selected, the applicant must submit the results to the Division for approval, including copies of the proposal, a description of the selection process, and the qualifications of the selected Panel members.

The cost of the technical review effort is included in the planning allowance described in Section XII.B.

Failure to complete a technical review effort, in accordance with the referenced DBIA manual, or equal, and the provisions stated above, will result in the proposed project being ineligible for SRF loan funding.

## **X. PLANS AND SPECIFICATIONS**

### **A. Review Procedures**

The primary focus of the review of the final plans and specifications will be to determine if the design is consistent with the facilities described in the Facilities Plan approval letter, if the proposed project, in concept, will meet discharge requirements, and if it will comply with

applicable Federal and State loan program requirements. The final plans and specifications must be approved by the Division and the applicant must agree to the eligibility determinations and performance certification standards prior to issuance of the loan contract.

Applicants, at their option, may submit ten percent plans for review if they would like an initial review prior to finalizing the project plans and specifications. Applicants may also request, at their option, a detailed design review by the Division with any comments resulting to be forwarded to the applicants and their consultants.

For Design-Build projects, the review and approval of the design of the project would be carried out in a three-phased approach. The first review will be done after the RFQs are submitted to the Division to determine if the evaluation and selection process used for pre-qualifying bidders is fair and equitable and that the selection criteria is described accurately and completely. The second review will be after the RFP is submitted to the Division to determine the project component eligibility; to establish project performance standards; and to verify that the proposed project is consistent with the facilities described in the Facilities Plan approval letter. The third review is after the applicant has selected the successful low bidder and the ATA is submitted to the Division. Design review during the third phase will be limited to assuring that the project being designed and constructed is consistent with the facilities described in the Facilities Plan and is the same as described in the RFP approved by the Division, and also to check if the proposed project, in concept, will meet discharge requirements, and to assure its compliance with Federal and State loan programs' constructability and biddability requirements.

## B. Value Engineering

Applicants with estimated total project costs greater than \$10 million must conduct a Value Engineering (VE) study. VE studies are also recommended for projects costing less than \$10 million because of the potential cost savings and design improvements resulting from the VE process. An extra allowance amount will be provided for applicants conducting VE studies for projects costing less than \$10 million. (See Appendix I Allowances).

The VE study report shall be submitted with the final plans and specifications. The VE study report shall describe all the VE recommendations. If any VE recommendations are not being implemented, the submittal shall discuss the reasons for rejection. Applicants should consult with Division design staff at the ten (10) percent design stage regarding VE requirements. (See SRF Guidance Memorandum No. 3, Appendix C).

For Design-Build projects, irrespective of the project cost, an independent technical review shall be conducted prior to the completion of the RFP. The RFP shall contain the results of the technical review and form the basis for the bidding documents. For information on conducting independent technical reviews, please see Section IX.K. This technical review will replace the VE requirements that apply to normal design and construction projects.

C. Project Performance Standards

The performance standards for a project shall be established initially during the facilities planning stage and modified during the design eligibility review process, or during preparation of the Design-Build RFP. During design review, the applicant and the Division will mutually agree on specific project performance standards for loan funded unit processes and equipment. At the end of the one-year project performance certification period, actual operating data must be compared with the project performance standards.

Project performance standards may be established in one of two ways:

1. The recipient may request that the Division develop performance standards based on Division guidelines, or
2. The recipient may develop performance standards for Division approval.

Project performance standards shall be based on waste discharge requirements. The standards will describe monitoring data necessary for project certification, including sampling locations, frequency of sampling, flow conditions, duration of sampling, and testing procedures for mechanical equipment. For non-discharging projects (such as I/I correction and pump stations), the project performance standards include the elimination of overflows and reduction of infiltration/inflow to the levels specified in a SSES.

The applicant and the Division will mutually agree on the project performance standards before final plans and specifications, or Design-Build RFP approval. The agreement on project performance standards will be included as part of the loan contract. Further information on project performance standards is included in Appendix J, Guidelines for Project Performance Certification.

D. Loan Contract

1. Normal projects

The loan contract will be issued after final plans and specifications are approved and all other program requirements have been satisfied. The loan amount will be based on the engineer's estimate of the eligible project costs. The loan contract will be amended once at the ATA to

**DRAFT**

reflect the actual project costs, subject to the 50 percent cost increase limit under Section XV.D.

2. Design-Build Projects

For Design-Build projects, the loan contract will be issued after the preliminary loan commitment and after the applicant's RFP has been reviewed and approved by the Division. The loan contract will be amended after the Division issues the ATA that reflects the actual eligible project costs.

E. Labor Wage Provisions

The recipient must comply with State wage determinations. The final plans and specifications will be reviewed to make sure the proper wage determination provisions have been inserted in the specifications. The recipient will be responsible for assuring compliance with applicable labor laws.

F. Minority Business Enterprise/Women's Business Enterprise (MBE/WBE)

The recipient must insert the following forms in its contract bidding documents: (1) Contract Provisions Relative to MBE/WBE; (2) MBE/WBE Self Certification (Attachment A); and (3) Form 4700-5 (Attachment B). Contact your project manager for the latest version. Furthermore, a pre-bid conference with the prospective bidders is strongly encouraged to explain the MBE/WBE "positive effort" requirement.

The recipient must submit three MBE/WBE forms with the ATA request package. These are: (1) Attachment B (submitted with the bid); (2) Attachment A; and (3) the applicant's MBE/WBE Positive Effort Certification (see Appendix K). In the event the bidder does not meet the MBE/WBE fair share objectives, additional documentation must be submitted to the Division by the recipient to demonstrate that the low bidder complied with the positive effort steps listed in the Contract Provisions for MBE/WBE Utilization.

If acceptable positive effort steps have not been taken, the Division cannot authorize the award of the construction contract. Selecting the next low, responsive, responsible bidder, or rebidding the contract, are acceptable alternatives for the recipient if loan assistance is still desired. The loan contract will be amended to reflect the costs of selection of the next low, responsive, responsible bidder or the low, responsive, responsible bidder after rebidding.

Recipients shall report MBE/WBE utilization to the Division on the MBE/WBE Utilization Report, SWRCB Form MBE/WBE UR334 (See Appendix L). Reports must be submitted to the Division within ten (10)

calendar days following the end of each federal fiscal quarter until such time as the “Notice of Completion” is issued.

**XI. COMPLIANCE WITH OTHER FEDERAL STATUTES AND AUTHORITIES**

In the January 28, 1988 Final Guidance for State Revolving Funds, EPA listed a number of other Federal laws and authorities that must be followed for activities supported with SRF funds directly made available by capitalization grants. Appendix M contains a current list of these other laws and authorities with a sample certification form.

Prior to issuance of the loan contract, applicants will be required to certify that they have complied, or will comply, with all the other Federal authorities listed in Appendix M.

**XII. ALLOWANCES**

**A. Normal Allowances**

A fixed amount of loan funds will be provided to the loan recipient to partially offset costs for planning, design, construction management, administration, and prime engineering. An additional design allowance (see Appendix I) is included for applicants doing VE studies for projects costing less than \$10 million. For projects costing more than \$10 million, the cost of the VE study is included in the design allowance. Payment of the planning and design allowances will be made on actual costs incurred and may be requested as soon as the loan contract is issued. The allowance amounts will be determined from the eligible construction costs at the ATA stage.

**B. Design-Build Allowances**

The allowance for Design-Build projects will be determined by entering the allowance tables (See Appendix I) at the amount proposed by the Design-Build contractor. The amount for design will be multiplied by 80 percent and that amount deducted from the Design-Build contractor’s proposed amount. The resulting amount (construction cost) will be used to reenter the tables for all allowances. To the planning allowance will be added 20 percent of the design allowance calculated and no allowance will be allowed for design. For Design-Build projects with construction costs under \$10 million, the value for VE will also be added to the planning allowance. For example: the Contractor’s bid amount for a treatment plant is \$10 million. The Design Allowance for \$10 million is \$490,070. Eighty percent is \$392,056. The construction cost is \$9,607,944 (\$10,000,000-\$392,056).

The allowances for \$9,607,944 normal project are:

Planning	\$242,926
Design	\$473,079
Construction	\$853,125



**DRAFT**

Administration	\$ 86,471
Prime Engineering	\$ 25,669
Value Engineering	\$ 30,000

For a Design-Build project, the allowances are:

Planning	\$367,542	[\$242,926+(20% x \$473,079)+\$30,000]
Design	\$ -0-	
Construction	\$853,125	
Administration	\$ 86,471	
Prime Engineering	\$ 25, 669	

The allowance should not be construed to represent a limit for each project. Needs must be considered on the basis of specific factors associated with that project. Such consideration could result in engineering costs which are appropriate and which could be higher or lower than the amount of the allowance. There are separate tables for pipeline projects and treatment facilities. The tables provided in Appendix I also take into account projects that may have received previous grants for planning and/or for design.

The final allowance will be calculated by a computer program based on the eligible low bid amount. The tables included in Appendix I of this Policy should only be used to estimate the amount of the allowance.

### **XIII. LOAN APPLICATION AND CONTRACT AWARD**

The loan application should be submitted with the Facilities Plan. Following the preliminary loan commitment and prior to design completion, the applicant is required to advise the Division whether the proposed project would be completed using Design-Build or the design-bid-build (normal) method of construction. Depending on the choice of the construction method, the Division will prepare a loan contract checklist to assure all program requirements have been met before award of loan assistance. A sample of the loan application, loan contract and checklist are contained in Appendix N. The loan contract for normal projects will be awarded after the final plans and specifications are approved based on the engineer's estimate of the eligible project costs. However, for Design-Build projects, the loan contract will be awarded after the RFP is approved by the Division based on the engineer's estimate for the eligible project.

### **XIV. APPROVAL TO AWARD (ATA)**

Recipients will be required to submit an ATA package to the Division for review and approval prior to awarding the construction contracts.

Appendix K contains the ATA Request Form, the MBE/WBE Positive Effort Certification and the MBE/WBE forms that must be submitted with the request to award the construction contract.

The Division will use the lowest acceptable bid to determine the final eligible loan contract amount. The Division will also review the ATA request package to assure that both the recipient and its contractors have complied with the MBE/WBE positive effort requirements.

Neither the EPA nor the SWRCB will be involved in resolving bid disputes. Bid dispute resolution will be the sole responsibility of the recipient. The ATA will not be issued until all bid disputes have been resolved by the recipient.

Once the ATA package has been submitted and is complete, and the final loan amount is agreed upon, the Division will amend the loan contract to reflect actual eligible costs and mail it to the recipient for signature.

## **XV. AMENDED LOAN CONTRACT**

### **A. Interest Rate**

The interest rate is set pursuant to Subsection 13480(b)(1) of the Water Code when the initial loan contract is issued. (See also Subsection 13478 of the Water Code for the local match program).

### **B. Final Loan Amount**

The amended loan contract amount will be based on the sum of the lowest acceptable bid costs of the eligible construction project, and the appropriate allowances for planning, design, construction, prime engineering, and administration.

The final eligible project cost will be determined at the ATA stage based on the date for initiation of construction.

### **C. Contract Initiation**

The recipient will have a maximum of six (6) months from the effective date of the loan contract to award the prime construction contract. An extension of up to 90 days may be granted by the Division in the event of unusual circumstances.

At the time of the submittal of the ATA package, the recipient must demonstrate that an amount equal to at least five (5) percent of the estimated project costs will be available for project contingencies. The contingency amount will not be eligible for loan assistance.

### **D. Cost Increases**

After the amended loan contract is issued, all project changes that result in cost increases will be the responsibility of the recipient.

If at any time the total eligible project costs exceed the preliminary loan commitment amount by more than fifty (50) percent, the project must receive re-approval of the preliminary commitment.

E. Future Local Debt

The SRF loan contract will contain a provision requiring the sale of future local debt to be on parity with, or subordinate to, the SRF debt unless all of the following criteria are met:

1. The applicant's non-subordinate debt is rated "A", or higher, by at least two nationally recognized rating agencies.
2. The applicant pledges that net revenues available to pay the SRF loan are at least 1.1 times the current year's debt service on SRF loans.
3. The applicant agrees to pay the 20 percent state match amount for their loan in return for a zero interest loan.

**XVI. LOAN DISBURSEMENTS**

Disbursements to recipients will be subject to EPA requirements and/or limitations. Costs may be submitted for payment on a monthly basis.

Costs submitted to the Division for payment must be currently due and payable to the project contractors. It will not, however, be necessary for the recipient to have actually paid the costs before requesting payment under the loan contract.

A. Loan Disbursement Requests

The recipient will receive a copy of the SRF Disbursement Request Form No. 260 or Request for Loan Disbursement Form No. 261 for zero interest loans. (See Appendix P) upon execution of the loan contract. The recipient will be responsible for completing columns C. (Costs Incurred to Date) and E. (Costs Claimed for Payment to Date). The recipient is also responsible for the certification of expenditures by the authorized representative. A copy of each processed payment request will be sent to the recipient to show the amount disbursed by the Division. Specific instructions for requesting disbursements are also included in Appendix P.

B. Allowance Requests

A request for disbursement of the planning and design allowances can be submitted as soon as the loan contract is issued. The total amount for all the allowances will also be shown on the SRF Disbursement Request Form No. 260/261 sent to the recipient. Recipients must certify that planning and design work has been completed and that claimed costs were incurred. Unless

requested by the Division, it is not necessary to include invoices or other documentation for the disbursement of allowances. The final allowance amounts will be based on the eligible low bid costs and will be included in the amended loan contract. Any overpayment of allowances based on the initial loan contract, which have already been paid, will be subtracted from subsequent requests for disbursements.

C. Construction Progress Payment Requests

The recipient will receive a copy of the SWRCB Construction Contractor Spreadsheet Form No. 259 after the ATA has been issued by the Division and the amended loan amount has been agreed upon. Instructions for completing this form are also in Appendix P.

When requesting disbursement for construction, the recipient must include a copy of the Construction Contractor's Pay Estimate along with completed Form Nos. 259 and 260/261 (See Appendix P). The Contractor's Pay Estimate must be itemized by bid item or show a relationship between the Contractor's Pay Estimate and the bid items. The estimate must be signed by the contractor and the authorized representative. The allowance will be paid as costs are incurred. The loan disbursement will be based on the amount of money currently due and payable to the contractor for eligible bid items plus costs incurred for engineering and administration minus any amounts previously paid by the Division. The recipient should assure that adequate local funding is available to pay the contractor in case the loan disbursement is not processed before payment to the contractor is due.

D. Division Assistance

If you need assistance, or have any questions regarding submittal of a request for a loan disbursement, please contact the Chief of the Financial and Administration Unit at (916) 341-5820.

**XVII. CONSTRUCTION**

A. Preconstruction Conference

The recipient should notify the Division as soon as the preconstruction conference with the construction contractor is scheduled. Division staff may choose to attend.

B. Construction Inspections

1. Interim Inspections

The Division may conduct interim inspections during construction.

2. Final Inspections

The Division may conduct a final construction inspection.

C. Completion of Construction Date

The completion of construction date will be established for the purpose of determining the loan repayment schedule. The date will be established by mutual agreement between the Division and the recipient.

D. Status Reports

Recipients shall submit reports on the status of construction activities no less frequently than quarterly starting with the issuance of the Notice to Proceed to the contractor. At minimum the reports will contain the following information:

1. A summary of progress to date including a description of progress since the last report, percent construction complete, percent contractor invoiced and percent schedule elapsed.
2. A listing of change orders including amount, description of work, and change in contract amount and schedule.
3. Any problems encountered, proposed resolution, schedule for resolution and status of previous problem resolutions.

**XVIII. OPERATION**

A. Final Project Inspection

After the completion of construction date is established, the recipient and the Division will mutually agree on the initiation of operation date. The initiation of operation date is the start of the one-year project performance certification period. During the certification period, the Division will conduct a Final Project Inspection to determine if the treatment facilities are being maintained and operated satisfactorily, and are capable of meeting performance standards. The Division will prepare a final project inspection report, which will identify areas of operational deficiencies, if they exist.

Recipients must provide the Division a copy of the Operation and Maintenance Manual within the first six months of operation. The manual will be used to assist the Division with the final project inspection and review of the project performance certification.

B. Project Performance Report and Certification

One year after initiation of operation, the recipient is required to certify that the project meets the project performance standards and must submit a project performance certification report. The project performance certification report should summarize the data collected during the one-year project performance period and discuss the project's current and future ability to meet the project performance standards. The project performance certification report should

also address any items noted as deficient in the final project inspection report. The Division will approve the certification of the project, if appropriate, at the end of the one-year certification period. A detailed outline of the Project Performance Report requirements for various types of projects can be obtained from the Operations Unit.

If the project cannot be affirmatively certified, the recipient must prepare a corrective action report, which analyzes the project's inability to meet the project performance standards. The corrective action report must include an estimate of the nature, scope and cost of the corrective action, and a time schedule for meeting the project performance standards. The time schedule must include an estimated date by which the loan recipient will certify the project and submit a project performance certification report. The Division will conduct follow-up inspections, as necessary, to monitor the recipient's progress towards meeting the project performance standards. The cost of the corrective action is not eligible for loan assistance.

If the recipient does not submit a project performance certification report which includes a signed certificate of performance, or a corrective action plan, within fifteen (15) months of the initiation of operation date, an interest penalty of one-tenth of one (0.1) percent per day will be assessed on the outstanding loan balance due. The interest penalty will begin on the first day after expiration of the appropriate deadline. Further information on project performance certification is included in Appendix J.

## **XIX. RECORD KEEPING REQUIREMENTS**

Recipients are required to maintain separate project accounts in accordance with generally accepted government accounting standards. More specifically, the following records must be maintained:

- Accounts accurately depicting amounts received and expended for the project, including all funds received from the SRF;
- Program income data; and
- Total cost of the project.

Invoices must be maintained for a period of at least three years after submittal and acceptance of an affirmative Project Performance Certification. All other records must be kept for the life of the loan.

## **XX. REPAYMENTS**

Interest will accrue on all loan disbursements as of the date each disbursement is made. A revised repayment schedule will be issued by the Division after the recipient submits an approvable final disbursement request.

The Division will prepare a repayment schedule that includes:

- The interest rate;
- Accrued interest;
- Amount of dollars loaned;
- The final principal amount of the loan due including accrued interest; and
- A complete amortization table.

The first annual loan repayment will be due one year following the completion of construction date, as set by the Division under Section XVII.C. The loans will be fully amortized no later than twenty (20) years after completion of construction. The amount to be repaid will include the amount loaned plus accrued interest. The Division will normally send a repayment notice thirty (30) days before the date each repayment is due, but prompt repayment remains the responsibility of the recipient.

A penalty of one-tenth of one percent (0.1%) per day on the amount due will be assessed for late repayment. A ten (10) day grace period will be allowed. However, if the repayment is not received by the end of the grace period, the penalty will be assessed from the repayment due date. Any penalties collected will be deposited in the SRF account to be made available for SRF assistance.

Penalties assessed will not change the principal balance of the loan contract. Such penalties will be treated as a separate account in addition to the annual repayment due.

All repayments are to be sent to:

SRF Accounting Office  
Attention: SRF Program  
Post Office Box 1888  
Sacramento, CA 95812-1888

## **XXI. BOARD RESERVATION OF AUTHORITY**

Prior to the signing of any loan contract, the SWRCB reserves the right to modify this SRF Policy as necessary to provide for effective and equitable use of SRF funds, including:

- Reducing the eligible loan amount for any project;
- Adjusting the terms for repayment of the loan consistent with applicable statutes.

Any such action will be taken only in a manner consistent with applicable Federal and State requirements and after any prospective applicant, adversely affected by the action, has had an opportunity to comment on the proposed action.

**XXII. ELIGIBILITY DISPUTES**

Any dispute, which is not otherwise resolved, shall be referred to the Chief of the Division, or his/her delegate, for decision. The decision by the Chief of the Division, or his/her delegate, shall be reviewable by the SWRCB, at the option of the SWRCB.

In the event that a Division Decision is not acceptable, the applicant or recipient may appeal within 30 days to the Chief of the Division for a final Division Decision. If the applicant or recipient is not satisfied by the final Division Decision, the applicant or recipient may appeal to the SWRCB within 30 days. The Office of the Chief Counsel of the SWRCB will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the SWRCB's Executive Director and all the SWRCB Members. Upon the motion of any SWRCB Member, the SWRCB will undertake to review and resolve the dispute in the manner determined by the SWRCB. Should the SWRCB determine not to review the Final Division Decision, this decision will represent a final agency action on the dispute.

These provisions do not pertain to disputes under an executed loan contract. Such disputes shall be resolved in accordance with the disputes resolution provisions of the contract.